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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION ONE

In re T.M., a Person Coming Under the
Juvenile Court Law.

SONOMA COUNTY HUMAN
SERVICES DEPARTMENT,

Plaintiff and Respondent,

v.

S.S.,

Defendant and Appellant.

A155753

(Sonoma County
Super. Ct. No. 4914DEP)

S.S. (Mother) appeals from an order denying her Welfare and Institutions Code¹ section 388 petition and terminating parental rights at a section 366.26 selection and implementation hearing. Mother's sole contention on appeal is that the juvenile court abused its discretion in denying her request for a bonding study. We affirm.

I. BACKGROUND

On June 21, 2016, the Sonoma County Human Services Department (Department) filed a petition alleging one-month-old T.M. (minor) came within section 300, subdivision (b)(1), due to Mother's substance abuse and her volatile relationship with minor's father. Mother had used methadone and methamphetamine during her pregnancy and minor had been hospitalized since birth and was suffering significant withdrawal

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

symptoms. During his hospitalization, Mother visited minor inconsistently, was unable to retain instructions on how to care for him and maintain proper feeding, and presented as “disheveled and unkempt with low frustration tolerance and agitation,” leading the hospital social worker and pediatrician to believe she was using drugs. Mother and minor’s father (father) were also observed having arguments and angry outbursts in the neonatal intensive care unit. The juvenile court ordered minor detained.

On July 18, 2016, the Department filed its jurisdiction/disposition report. Mother told the social worker that she and father had used drugs together in the past, “ ‘but that was before he got clean and sober and before we started dating.’ ” Mother said she and father planned to stay together and wanted to accept services so they could raise minor. In her report, the social worker noted Mother and father had been visiting minor twice weekly under Department supervision, the visits were going well, and the parents were attentive and dedicated to their son. The report concluded minor would be safe in his parents’ care with a detailed safety plan in place.

In September 2016, the Department filed an addendum to the report with a change in the Department’s recommendation for minor. After a “failed” weekend home visit with minor the prior month, “as well as domestic disturbances, dishonesty, and alleged drug use,” the Department changed its recommendation from “Family Maintenance” to “Family Reunification,” with minor in foster care. Thereafter, the social worker attempted to reach both parents three times asking them to drug test; father did not respond, and Mother responded but did not test. Mother and father subsequently failed to appear for court. The social worker stated Mother was eligible to have reunification services denied based on her history of drug abuse and failure to complete court-ordered treatment but nonetheless recommended Mother receive reunification services. The Department recommended supervised visits twice a week, with separate visits for Mother and father.

A month later, the Department filed a second addendum report, again changing its recommendation to suggest the court bypass Mother for reunification services because she “has not maintained consistent contact with the Department, has not taken any steps

to begin services despite being given the contact information for her providers numerous times, has missed visits, and has not been testing when requested.” The Department also had “grave concerns” about Mother’s mental health and sobriety. The Department recommended reunification services be given to father. At the jurisdictional and dispositional hearing on October 27, 2016, the court found the allegations of the petition true, declared minor a dependent of the court, and removed him from parental custody. The court denied Mother reunification services and provided them to father.

In March 2017, Mother filed a request to change court orders and sought six months of reunification services based on her participation in the perinatal program at the Drug Abuse Alternatives Center (DAAC), individual therapy, and parenting education. The Department’s report for the six-month review hearing indicated minor had shown “immense growth,” was reaching many developmental milestones, and the “[p]redictability and consistency with his daily routines and home environment along with constant love and affection” in foster care had heightened progress toward his mental health. His foster parent reported he nonetheless struggled with transitions and would “ ‘shut down’ ” for brief periods following some visits with his parents, and had night terrors about once a week. The social worker also reported that during Mother’s once weekly supervised visits, she was able to soothe minor, read his cues, and he smiled and maintained eye contact with her. The court granted Mother reunification services.

The Department’s report for the 12-month review hearing recommended extending reunification services for Mother, who had been attending substance abuse treatment, parenting education, and therapy. Although both parents progressed over the course of two months from supervised to lightly supervised to unsupervised visits, the Department began to have concerns regarding the parents’ “dynamics” as the visits transitioned to unsupervised. Father’s mother reported she was concerned about Mother’s unsafe behavior during a visit, and both parents cancelled a visit the following week. Mother reported concerns with father’s sobriety and safety. Due to increasing concerns with the parents’ relationship, visits went back to separate and lightly supervised. Though Mother began attending swim lessons and medical appointments for

minor, she was 40 minutes late to one appointment, and both parents missed minor's annual review with the Early Learning Institute because they forgot. At the 12-month review hearing, the court ordered minor remain in foster placement, Mother continue to receive reunification services, and reunification services for father be terminated.

The Department filed its report for the 18-month review hearing in December 2017. The report noted father had died in September 2017. Meanwhile, Mother had failed to comply with her case plan. Mother was discharged from the DAAC program in September, before father's death, for failing to meet treatment requirements. Her attendance was poor in July and August and she was absent from the program for most of September. She did not attend Alcoholics Anonymous or Narcotics Anonymous meetings in October, reported to the social worker that she used methamphetamines once after seeing father in the hospital, and repeatedly avoided drug testing in October and November.

The social worker also commented on Mother's visits with minor. During the review period she had lightly supervised visits twice weekly at the Department. The supervisor reported Mother came late to visits, "appearing anxious, talking rapidly, running back and forth to her car to get things she had forgotten, and her energy was negatively impacting the visit time with [minor], as he would pull away and withdraw." On one visit, minor had the flu and Mother handed him to the supervisor at the end of the visit, stating he was " 'delusional.' " When Mother was to begin home visits in September, she cancelled the first visit due to father's death. At another visit at her home, she forgot to have a support person present, then appeared "preoccupied," running to make minor food though he was not hungry. The caregiver reported minor had difficulty adjusting to the changes in visitation and became pickier with his eating, would not settle for regular naps, and resumed night terrors, waking and screaming for 10 to 15 seconds in the middle of the night.

At the contested 18-month review hearing in March 2018, the court heard testimony from Mother's therapist, the perinatal program coordinator at DAAC, a therapist who worked with Mother and minor, the social worker, Mother's friend,

Mother's neighbor, and Mother. The court found return of minor to Mother's custody would create a substantial risk of detriment to his safety, terminated reunification services to Mother, and ordered a section 366.26 hearing. After the court made its orders, Mother's attorney indicated she intended to file a motion for a bonding study.

In May and June 2018, Mother requested a *Marsden*² hearing. The court appointed new counsel for Mother in June. Just before new counsel was appointed, Mother filed a section 388 petition asking the court to restore reunification services. On July 2, 2018, Mother's attorney filed a declaration on her behalf clarifying that she was requesting the court to return minor to her custody under a family maintenance supervision plan.

The Department's assessment report for the section 366.26 hearing reported minor was "generally a happy, active and confident" two year old with "strong emotional ties" to his foster family. His foster mother was "a touchstone" for minor, he appeared content and at ease with her, and he was "accustomed to his routine with the family." He was connected to and had developed a sibling relationship with his four-year-old foster brother. His foster mother had cared for him since he was six months old and was very committed to adopting him. She provided a "safe and predictable routine," a "clean, warm and child friendly" home environment, and "affection, attention and opportunities for healthy development" for minor. The social worker noted there had been "huge improvements in his development over the last year while in her care." The social worker believed removing him from his potential adoptive family would be seriously detrimental to his well-being.

As to the visitation history between Mother and minor, the report stated minor was used to the routine of the visits and the transitions had been smooth for some time. Mother had been consistent in attending the visits, was mostly on time, and was affectionate with minor. The social worker wrote minor was comfortable with Mother and enjoyed his visits with her, "however, it is likely he experiences the visits similar to

² *People v. Marsden* (1970) 2 Cal.3d 118.

that of a relative that one does not live with, but sees regularly, or a daycare provider. While [Mother] is loving towards her son in these visits, it is undeniable that [minor's] primary caregiver is his foster mother.” While interactions between minor and Mother may provide “some incidental benefit,” that benefit did not outweigh the benefit of permanent adoption.

In July 2018, Mother's new attorney filed a motion requesting the court order a bonding study in connection with Mother's section 388 petition, stating the study could be conducted by mid- to late September. Minor's counsel and the Department both opposed the request. In August, the court held a hearing on Mother's motion, and after hearing argument, denied it. The court stated: “[T]here's observations that [Mother] will testify as to the nature and quality of the bond, also the visit supervisors have given [a] factual account as to the nature and quality of the bond. I do believe that without a bonding study [Mother] can advance that she has a strong bond with her child and can support that with relevant witnesses. So I don't believe an expert would be necessary given the facts as I know them to assist me in determining the nature and quality of the bond. So I believe witnesses that have already been mentioned and quoted could provide that evidence to the Court.”

In September 2018, the juvenile court held the section 388 and section 366.26 hearings. The court heard testimony from Mother's therapist, the perinatal program coordinator at DAAC, the social worker, Mother's parent mentor, and Mother. Mother's therapist testified Mother was “very stable” and she had no qualms about Mother caring for minor because while she had never seen Mother and minor together, she had reviewed visit notes and saw a person who is “totally child focused” and “a mother that's connected to her kid.” Mother's parent mentor, who attended five visits with Mother and minor, said minor was affectionate with Mother, called her “Mommy,” and had fun playing with Mother. She testified Mother was more like a parent than a friend or relative, because when minor pointed at Mother's bag to indicate he was hungry, Mother asked him if he wanted a snack.

When Mother testified, she described her visits with minor, the toys they played with, and the activities they did on visits. She noted even though their visits had been reduced to once a month, minor still calls her “Momma,” and he often runs to her with open arms and is always excited to see her. Mother said minor is spontaneously affectionate with her, and said he “loves me like a child should love his mom.”

The social worker testified she had observed parts of at least three visits between Mother and minor, and seen minor on four or five other occasions outside the visits with Mother. She said minor refers to the foster mother as his primary caregiver “with a sense of comfort and security,” and she had not observed that with Mother. She had seen him use the word “Momma” with both Mother and foster mother. She also said minor is an affectionate and friendly child who will take toys out to people in the lobby. His behavior with Mother was similar to interactions the social worker observed with his occupational therapist, including running freely to him, sitting in his lap, following him when he was leaving, and saying goodbye. She testified it would not be in his best interests to leave his foster mother.

After hearing argument from the parties, the juvenile court denied the section 388 petition. For the section 366.26 hearing, the court found by clear and convincing evidence that it was likely minor would be adopted and that termination of parental rights would not be detrimental to him. The court ordered Mother’s parental rights terminated and ordered a permanent plan of adoption.

II. DISCUSSION

Mother’s sole argument on appeal is that the juvenile court abused its discretion when it denied Mother’s request for a bonding study.

Under Evidence Code section 730, the juvenile court has discretion to order a bonding study “[w]hen it appears to the court, at any time before or during the trial of an action, that expert evidence is or may be required by the court or by any party to the action” (Evid. Code, § 730; *In re S.R.* (2009) 173 Cal.App.4th 864, 869.) An order denying a bonding study is reviewed for abuse of discretion. (*In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1341.) “The applicable standard of review is whether under all the

evidence viewed in a light most favorable to the juvenile court's action, the juvenile court could have reasonably refrained from ordering a bonding study.” (*Ibid.*)

Mother sought the bonding study to aid the juvenile court in determining the best interests of the minor in adjudicating Mother's section 388 petition. Our Supreme Court has recognized that a petition for modification pursuant to section 388 is appropriate when a parent completes a reformation before the actual termination of parental rights, as that process “provides a means for the court to address a legitimate change of circumstances while protecting the child's need for prompt resolution of his custody status.” (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309.) At a section 388 hearing, the dispositive question is whether “the best interests of the child require[] that the previous order . . . be set aside.” (*In re Jasmon O.* (1994) 8 Cal.4th 398, 418.) The “strength of relative bonds between the dependent child and *both* parent and caretakers,” is one of several factors the juvenile court should consider in evaluating changed circumstances and the best interests of the child. (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 532.)

In reviewing the juvenile court's order, however, we are mindful that once the court terminates reunification services and sets the selection and implementation hearing date, the focus of the proceeding changes from family reunification to the child's interest in permanence and stability. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317; *In re J.C.* (2014) 226 Cal.App.4th 503, 527; *Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 254 [by time of the § 366.26 hearing, “the interests of the parent and child have diverged, and the child's interest must be given more weight”].) That is, once reunification services have been terminated, the state's “‘interest in providing stable, permanent homes for children . . . requires the court to concentrate its efforts . . . on the child's placement and well-being, rather than on a parent's challenge to a custody order.’” (*In re Richard C.* (1998) 68 Cal.App.4th 1191, 1196, quoting *In re Marilyn H.*, *supra*, 5 Cal.4th at p. 307.)

Here, the juvenile court held a hearing on Mother's request for a bonding study in connection with her section 388 petition and denied it, concluding expert testimony was unnecessary because Mother could support her bonding claim with her own testimony

and that of other relevant witnesses. At the evidentiary hearing on Mother's section 388 petition, the court heard from Mother, her therapist, her parent mentor, and the Department about the bond between Mother and minor, and about the bond between minor and his foster mother. Though the evidence showed Mother had recently been consistent in attending regular supervised visits with minor, minor enjoyed the visits, and minor had positive interactions with and connection to Mother, it also showed minor had never lived with Mother and spent 18 months of his two years living with his foster mother. The evidence showed minor was closely attached to his foster mother, had thrived in her care, and it would be detrimental for him to be removed from her care. The juvenile court's determination it did not need expert testimony to evaluate Mother's bonding claim was reasonable under these circumstances.

Mother further argues the juvenile court's order was an abuse of discretion because her court-appointed attorney's failure to seek a bonding study in a timely manner precluded her from obtaining one. But the juvenile court did not deny the motion as untimely, it denied it on the merits because it concluded expert testimony was unnecessary. Mother's argument that her counsel's ineffective representation led to denial of her request is not supported by the record.

Mother also contends the court misunderstood the purpose of the bonding study, suggesting the court believed it was to discover evidence to support application of the beneficial relationship exception to adoption, not to support Mother's section 388 petition. But there is no evidence in the record to support Mother's contention.³ In

³ Mother asserts on reply that the juvenile court clearly misunderstood the nature of her request for a bonding study because "the court's language regarding the 'nature and quality of the bond' clearly tracks the beneficial relationship exception to adoption and case law interpreting that exception to adoption" as well as the language of *In re Richard C.*, *supra*, 68 Cal.App.4th 1191. We reject this inference, because evidence that would be presented on the question of return to Mother under section 388 is substantially the same evidence to be produced as on the issue of the beneficial relationship exception. (*In re G.B.* (2014) 227 Cal.App.4th 1147, 1163; Seiser & Kumli, Cal. Juvenile Courts Practice and Procedure (2019 ed.) Supplemental and Subsequent Petitions, § 2.140[3], p. 2-546.) In addition, as Mother argues, the relative strength of the bonds between

denying the motion, the court simply noted it did not need expert testimony to determine the nature and quality of minor's bond with Mother.

Finally, we reject Mother's argument the court abused its discretion because it prevented her from proving the relative strength of the bonds between minor and Mother and minor and his foster parent in support of Mother's section 388 petition. The court heard testimony at the section 388 hearing regarding Mother's bond with minor, and that testimony, primarily from Mother and her parent mentor, was generally positive. Indeed, the court acknowledged Mother's circumstances had changed, and that she had "in her mind, a strong, healthy relationship, a mother/child bond with her child." At the same time, the juvenile court also heard testimony from the social worker about the strong bond between minor and his foster mother. The court noted minor had been out of Mother's care "forever," and that while Mother had a biological bond with her child, the "day-to-day care, maintenance, safety and security of the child" were provided by the foster parent. Thus, the record reflects the juvenile court acknowledged Mother's bond with minor, but nonetheless concluded it was in the child's best interests to remain with the foster parent with whom he had been residing for most of his young life.

In any event, even if a bonding study might have provided additional evidence regarding the nature and quality of Mother's bond with minor, we cannot say the juvenile court's order was an abuse of discretion. As the court in *In re Richard C.* explained, "We understand that a bonding study may have enabled her to make a stronger case at the section 388 hearing. However, under the dependency scheme . . . [the mother] was required to muster her evidence *before* the termination of reunification services." (*In re Richard C.*, *supra*, 68 Cal.App.4th at p. 1196, italics added.) Further, as the *Richard C.* court noted, allowing bonding studies after the termination of reunification services would result in a delay in permanency planning, which would run counter to the Legislature's intent as reflected in the dependency statutes. (*Id.* at p. 1197.)

Mother and minor and minor and the foster mother, respectively, were among the factors for the court to consider in evaluating Mother's section 388 petition.

In sum, we conclude the juvenile court did not abuse its discretion in denying Mother's motion for a bonding study.

III. DISPOSITION

The orders denying Mother's request for a bonding study, denying Mother's section 388 petition, and terminating her parental rights are affirmed.

Margulies, J.

We concur:

Humes, P. J.

Sanchez, J.

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In re T.M.